



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

NO PROTEST RECEIVED
Release to Manager, NO Determinations - Cincinnati

DATE: 9-17-2002

SURNAME [REDACTED]

Date:

JUL 25 2002

Contact Person: [REDACTED]

Identification Number: [REDACTED]

Contact Number: [REDACTED]

INTERNAL REVENUE SERVICE
CINCINNATI, OHIO

OCT 01 2002

RECEIVED
TEGE DIVISION

Employer Identification Number: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(6). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

The information submitted indicates that you were incorporated on [REDACTED]. Your Articles of Incorporation state that your general purpose shall be to provide your members with services necessary to reconcile disputes concerning [REDACTED].

Your Code of Regulations states that the annual meeting of your members shall be held at your principal office on the last Monday of the third month following the close of each fiscal year. The members present in person or by proxy at any meeting shall constitute a quorum unless a larger proportion is required to take the action stated in the notice of the meeting.

In your application, you provided a copy of your [REDACTED].
In this publication, you state the following:

"[REDACTED] a nonprofit corporation with a mission of helping parties [REDACTED] and [REDACTED] than through [REDACTED] courts. The objective is to free up the courts from the congestion of unnecessary litigation and to resolve those cases instead with the aid of the [REDACTED] [REDACTED]."

[REDACTED] is designed to provide a nonbinding (though the parties can elect for a binding) and authoritative decision concerning [REDACTED].

In your application, you state that:

- (a) Approximately 25% of your time will be spent on public and private presentations, made for educational outreach and public awareness of problems associated with [REDACTED] and your procedures for streamlining infringement disputes to achieve quick results at a substantially reduced expense to litigants.

[REDACTED]

These presentations, most of which were made by invitation, were made by the Executive Director at various venues across the United States and in front of numerous professional organizations.

- (b) Approximately 15% of your time will be spent on rules and procedures development. Your essence is the unique procedures you have developed [REDACTED]. There are approximately 35 procedures, including request for hearing, petition for ripeness determination, scheduling order, panelist selection, fees (for all the above actions and for any other authorized fees), filing and service, form of papers, extensions of time, confidentiality, papers filed and positions taken in proceedings, initial disclosures, supplementation and amendments, and joint prehearing statement.
- (c) Approximately 15% of your time will be spent on development of informational materials and publications. Promotion of your activities has also been conducted through publication. Additionally, your Executive Director maintains a proprietary summary of case decisions, which has been a popular legal research source for your members.
- (d) Approximately 15% of your time will be spent on panelist development and training. You decide cases under your rules and procedures and through the use of independent neutrals, called "panelists," who must complete a rigorous training and certification program, conducted by your Executive Director and experts in the field of patent alternative dispute resolution techniques. Your training manual contains a comprehensive review of your procedures, as well as substantive case law, and a series of articles on alternative dispute resolution practice and other practical materials that help provide guidelines for the conduct of your hearings.
- (e) Approximately 30% of your time will be spent on public relations, communications, and general administration.

In your application, you state that your qualification for membership is payment of annual dues based on member size and type (individual/small entity pays \$2,000.00, service firm pays \$3,500.00, and corporation pays \$7,500.00). You also state that in order to improve your chances of success and accomplish your mission, you are planning to transfer your assets to [REDACTED]

In your brochure, you state that your sole purpose is to function as [REDACTED] and that you would be formed, funded, and [REDACTED]. You state you will provide (1) an authoritative read on [REDACTED] that can be respected by both parties, (2) the resolution of [REDACTED] within a short period of time, and (3) a process which is inexpensive compared to litigation or arbitration, but which does not achieve savings at the expense of meaningful results. You also state that more than 95% [REDACTED] are resolved with a business solution such as [REDACTED], and you will give [REDACTED] the opportunity to attain that business solution on the front end with a system that is "ready, set, go."

[REDACTED]

In your letter dated July 2, 2001, you explain that you have only one class of membership, with differing membership fees based on member type. You explain that your membership is made up of individuals and corporations who support your mission to provide and promote dispute resolution alternative [REDACTED]. You also state that [REDACTED] common interest in maximizing [REDACTED], and that you were conceived to implement and promote a system to [REDACTED], thereby improving business conditions of persons and companies [REDACTED]. You state that your mission is not to resolve individual disputes of your members, but to provide services to those in the line of business [REDACTED] that aid in maximizing [REDACTED]. Rather than simply provide resolution of particular disputes for certain persons, you seek to develop and promote an alternative for the resolution of these disputes.

In your letter dated July 26, 2001, you explain that your members have a common business interest, [REDACTED] intellectual property, and that through the promotion [REDACTED] you seek to improve the efficiency of [REDACTED]. You state that you work to improve the ability to [REDACTED], rather than [REDACTED] patent disputes of [REDACTED] members. To this end, you publish a standard set of rules and regulations for the resolution of [REDACTED] and [REDACTED] who will [REDACTED]. You state that you would not conduct the resolutions yourself, but improve [REDACTED] by training individuals and proposing a standard for conducting such resolutions. You state that while your members benefit from the implementation of an alternative resolution structure, your activities benefit [REDACTED].

In your letter dated May 8, 2002, you explain that all your members are engaged in the business [REDACTED] intellectual property. You state that your membership includes law firms [REDACTED] as well as major corporations with internal legal departments that are dedicated, in part, [REDACTED] and enforcing the intellectual property rights [REDACTED]. You state that [REDACTED] the existing legal system has proven to be cumbersome, time intensive, and costly, and that your members find [REDACTED] of [REDACTED] and enforcing intellectual property rights through the courts is, in many cases, [REDACTED]. Your members seek a more efficient alternative. You also state that you envisioned a structure where you would collect an administrative fee from panel participants for services rendered in association with providing panelists and rules and regulations for hearings, and that the opinions issued by certified panelists are opinions issued by an independent neutral panel.

Section 501(c)(6) of the Code provides for the exemption from United States federal income tax of business leagues, chambers of commerce, real-estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulations provides that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce

[REDACTED]

or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for a profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league

Rev. Rul. 56-65, 1956-1 C.B. 199, holds that a local organization whose principal activity consists of furnishing particular information and specialized individual services to its individual members engaged in a particular industry, through publications and other means to effect economies in the operation of their individual businesses is performing particular services for individual persons. Such organization, therefore, is not entitled to exemption under section 501(c)(6) of the Code as a business league even though it performs functions which are of benefit to the particular industry and the public generally. The activities of the organization consisted of the maintenance of plan rooms for the convenience of members, where plans and specifications for local construction projects, together with the names of general contractors bidding on specific projects, are filed.

Rev. Rul. 59-391, 1959-2 C.B. 151, holds that an organization whose membership consists of individuals, firms, associations, and corporations, each of whom represents a different trade, business, occupation, or profession, and created for the purpose of exchanging information on business prospects does not qualify for exemption under section 501(c)(6) of the Code. Part of the rationale for the ruling is that the members have no common business interest other than a mutual desire to increase their individual sales.

Rev. Rul. 58-294, 1958-1 C.B. 244, describes an association organized and operated for the purposes of promoting uniform business, advertising, and fair trade practices in connection with the manufacture and sale of a certain patented product. The revenue ruling states that since the association is engaged in activities which are ordinarily carried on for profit and since it is engaged in furthering the business interest of the deals in the particular patented product, rather than the improvement of business conditions of one or more lines of business, it is not exempt under section 501(c)(6) of the Code.

Rev. Rul. 65-164, 1965-1 C.B. 238, clarifies Rev. Rul. 56-65, supra, and states that where services to individual members do not further the common interests and individual members derive a direct and non-incidental benefit from the services rendered, the organization would not qualify for exemption under section 501(c)(6) of the Code. For example, if the so-called business league organization essentially performed the functions of a labor or personnel department of a company, then the organization would be permitting benefits to inure to its membership. The revenue ruling continues that, similarly, if the services performed were to a substantial extent those of a kind which ordinarily constituted a business for profit such as serving as arbitrators in arbitration proceedings or prosecuting court or arbitration proceedings, the organization may not qualify for exemption if such features can be deemed to transcend the fulfillment of the common purposes of the group.

Rev. Rul. 66-338, 1966-2 C.B. 226, holds that an organization formed to promote the interest of a particular retail trade which advises its members in the operation of their individual businesses and sells supplies and equipment to them is not exempt under section 501(c)(6) of the Code. The revenue ruling states that by providing its members with an economy and convenience in the conduct of their individual businesses by enabling them to secure supplies, equipment, and services more cheaply than if they had to secure them on an individual basis, the organization is performing particular services for individual persons as distinguished from activities aimed at the improvement of business conditions in their trade as a whole.

Rev. Rul. 67-175, 1967-1 C.B. 139, holds that subsidizing the prosecution of a lawsuit for an injunction to prevent air pollution of a region did not cause an organization of growers and processors of agricultural products to lose its exemption from federal income tax under section 501(c)(6) of the Code. The revenue ruling states that, in this case, the activity was an activity promoting the common business interest of the members of the organization and was directed toward the improvement of business conditions in a particular line of business.

Rev. Rul. 68-264, 1968-1 C.B. 264, defines a particular service for the purposes of section 501(c)(6) of the Code as an activity that serves as a convenience or economy to the members of the organization in the operation of their own businesses.

Rev. Rul. 69-632, 1969-2 C.B. 120, describes a nonprofit association, composed of members of a particular industry, that was formed to develop new and improved uses for existing products of the industry. The association itself conducts no scientific research, but rather contracts with various research organizations, institutes, and universities for specific research projects selected by a committee of technical experts chosen from the association's membership. The revenue ruling concludes that no services are performed by the association for any individual member, nor are any of the association's patents and trademarks licensed to any member on an exclusive basis. Since the association's activities are directed towards improving the business conditions of the industry, in general, it is exempt under section 501(c)(6) of the Code.

Rev. Rul. 70-80, 1970-1 C.B. 130, holds that a nonprofit trade association of manufacturers whose principal activity is the promotion of its members' products under the association's registered trademark does not qualify for exemption under section 501(c)(6) of the Code. The revenue ruling concludes that the trademark is promoted by the organization in a way that is intended to give the members of the association a competitive advantage over others in the same industry by extolling the superior quality of the trademarked products. Thus the revenue ruling holds that the trademark promotion is not directed to the improvement of business conditions of the industry as a whole but is the performance of particular services for members.

Rev. Rul. 73-411, 1973-2 C.B. 180, in discussing the exempt status of a shopping center merchants' association under section 501(c)(6) of the Code, describes in detail the history of section 501(c)(6) and the types of organizations described therein. In the case of a chamber of commerce or similar organization, the common business interest required under section 1.501(c)(6)-1 of the regulations is usually the general economic welfare of a community.

[REDACTED]

Membership is voluntary and open generally to all business and professional men and women in the community. The revenue ruling states that it has been accepted that an organization seeking exemption from federal income tax under section 501(c)(6) as a chamber of commerce or board of trade must be one whose efforts are directed at promoting the common economic interest of all the commercial enterprises in a given trade community. The revenue ruling also defines trade associations or business leagues as similar to chambers of commerce or boards of trade, except that they serve only the common business interests of the members of a single line of business or of the members of closely related lines of business within a single industry.

In American Kennel Club v. Hoey, 148 F.2d 920 (1945), the court held that an association of dog owners, most of whom were not in the business of raising and selling dogs, did not further a common business interest and thus was not exempt under section 501(c)(6) of the Code.

The term "business" is construed broadly for purposes of section 501(c)(6) of the Code and includes almost any enterprise or activity conducted for remuneration. Thus, the term is broad enough to encompass professions (see Rev. Rul. 70-641, 1970-2 C.B. 119) as well as mercantile and trading businesses. It may also include the activities of organizations, such as consumer cooperatives, which engage in business on a cooperative basis (see Rev. Rul. 67-264, 1967-2 C.B. 196). Where there is no "business" involved, however, as explained in American Kennel Club v. Hoey, supra, exemption under section 501(c)(6) is precluded.

The information you have submitted fails to establish that the individuals you classify as members are in a common line of business for purposes of section 501(c)(6) of the Code, which requires more than a finding that the individuals or organizations are engaged in a business. Your membership, the only requirement for which is support of your mission and payment of dues (neither your Articles of Incorporation nor your Code of Regulations define your membership), does not appear to represent either a specific industry or various professions within a common business field. Although you are organized and operated to provide and promote a system to enforce [REDACTED] none of your members appear to be in the business [REDACTED], except to protect themselves [REDACTED] of [REDACTED] if such circumstance arises. Your membership is not comprised of either an entire industry, or all components of an industry within any particular trade community.

Your program is similar to that of the organization described in Rev. Rul. 59-391, supra, in that the sole purpose your members appear to have in common is a mutual desire to protect the [REDACTED]. We recognize that there are distinctions between your operations and those of the organization described in Rev. Rul. 59-391, in that membership in your organization is not restricted and members are not accorded any special privileges. However, the basic holding in that revenue ruling is that the participants have no common business interest other than a mutual desire to increase sales and that this is not sufficient to establish a common line of business for the purposes of section 501(c)(6) of the Code. Your membership similarly is not made up of persons with a common business interest within the meaning of section 501(c)(6), but rather consists of persons desiring to protect their own property. We have concluded that the holding in Rev. Rul. 59-391 applies to you and therefore you do not qualify for exemption under section 501(c)(6).

[REDACTED]

Since you state that you are structured along particular industry or business lines, i.e. [REDACTED], your right to exemption under section 501(c)(6) of the Code, if any, must rest on your characterization as a trade association or business league. As explained in Rev. Rul. 73-411, supra, membership in a section 501(c)(6) business league is voluntary and open generally to all businesses within a particular line of business or organizations representing closely related lines of business within your industry in your community. You are not serving the common business interests of members, but rather you are serving the individual interests of the person seeking [REDACTED]. Although the process of [REDACTED] through the courts may be cumbersome, inefficient, and expensive, your structure provides benefits only to the individual entity seeking a resolution. In this, your activities are carried on in much the same manner as the organizations discussed in Rev. Ruls. 56-65, 58-294, 65-164, and 66-338; all supra. Any benefit to any line of business as opposed to individual entities, is not evident as in Rev. Rul. 67-175, supra. Thus, you are lacking the essential element of representation of a line of business within the meaning of section 501(c)(6). Therefore, you are not considered to be a trade association or business league within the meaning of section 501(c)(6), which defines trade associations or business leagues as similar to chambers of commerce or boards of trade, except that they serve only the common business interests of the members of a single line of business or of the members of closely related lines of business within a single industry.

From the information you have presented, you appear to be similar to the organization described in Rev. Rul. 70-80, supra. [REDACTED] will be promoted by you in a way that is intended to give [REDACTED] competitive advantage over others in the same industry [REDACTED]. [REDACTED] not directed to the improvement of business conditions of the industry as a whole but is the performance of particular services for individual persons.

Although you state that you would not conduct the resolutions yourself, the panelists that you develop and train to provide the [REDACTED] dispute resolutions would be providing a solution under your auspices. You hold yourself out to be the provider of the authoritative decisions. You are providing the platform for the resolution of disputes between individuals to be resolved. This is the culmination of all your activities and is considered to be a particular service for the [REDACTED] who asked for your resolution. Since all your activities revolve around and are connected to this central service, your activities are all considered to be particular services. As explained in Rev. Rul. 68-264, supra, an activity that serves as a convenience or economy to members in the operation of their businesses is a particular service of the type proscribed in section 1.501(c)(6)-1 of the regulations. Where such activity is the primary activity of the organization, exemption under section 501(c)(6) of the Code is precluded.

Accordingly, for the above reasons, you do not qualify for exemption as an organization described in section 501(c)(6) of the Code and you must file federal income tax returns.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is

[REDACTED]

submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201.

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

[REDACTED]

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

[REDACTED]